

By: Parker

H.B. No. 1217

A BILL TO BE ENTITLED

AN ACT

relating to appointment of and performance of notarial acts by an electronic notary public; authorizing a fee and creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 406, Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ELECTRONIC NOTARY PUBLIC

Sec. 406.101. DEFINITIONS. In this subchapter:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(3) "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by the electronic notary public and contains the following:

(A) the electronic notary public's electronic signature, title, and commission expiration date;

(B) other required information concerning the date and place of the electronic notarization; and

(C) the facts attested to or certified by the electronic notary public in the particular notarization.

1 (4) "Electronic notarization" means an official act by
2 an electronic notary public under this subchapter or as otherwise
3 authorized by law that involves an electronic document.

4 (5) "Electronic notary public" means a notary public
5 who has been authorized by the secretary of state to notarize
6 electronic documents.

7 (6) "Electronic seal" means information within a
8 notarized electronic document that confirms the electronic notary
9 public's name, jurisdiction, and commission expiration date and
10 generally corresponds to information in notary seals used on paper
11 documents.

12 (7) "Electronic signature" means an electronic sound,
13 symbol, or process attached to or logically associated with an
14 electronic document and executed or adopted by a person with the
15 intent to sign the electronic document.

16 (8) "Online notarization" means the performance of an
17 electronic notarization by means of two-way video and audio
18 conference technology that meets the standards adopted under
19 Section 406.103.

20 Sec. 406.102. APPLICABILITY OF SUBCHAPTER. This subchapter
21 applies only to an electronic notarization relating to:

22 (1) a document involving real estate located in this
23 state;

24 (2) an agreement performable wholly or partly in this
25 state;

26 (3) an agreement or instrument creating a debt that is
27 payable at a location in this state;

1 (4) an agreement that specifically requires the
2 application of the laws of this state;

3 (5) a document, including an affidavit, that is
4 intended to be filed or used in a court located in this state; or

5 (6) an acknowledgment or affirmation made by a person
6 while the person is located in this state.

7 Sec. 406.103. STANDARDS FOR ELECTRONIC NOTARIZATION. The
8 secretary of state by rule shall develop and maintain standards for
9 electronic notarization in accordance with this subchapter. The
10 secretary of state may confer with the Department of Information
11 Resources or other appropriate state agency on matters relating to
12 equipment, security, and technological aspects of the electronic
13 notarization standards.

14 Sec. 406.104. APPLICATION; QUALIFICATIONS. (a) A notary
15 public or an applicant for appointment as a notary public under
16 Subchapter A may apply to the secretary of state to be appointed and
17 commissioned as an electronic notary public in the manner provided
18 by this section.

19 (b) A person qualifies to be appointed as an electronic
20 notary public by satisfying the qualification requirements for
21 appointment as a notary public under Subchapter A, paying the
22 application fee described by Subsection (c), and electronically
23 submitting to the secretary of state an application in the form
24 prescribed by the secretary of state that satisfies the secretary
25 of state that the applicant is qualified. The application must
26 include:

27 (1) the applicant's full legal and official notary

1 names;

2 (2) a certification of compliance with the secretary
3 of state's standards developed under Section 406.103; and

4 (3) an e-mail address of the applicant.

5 (c) The secretary of state may charge a fee for an
6 application submitted under this section in an amount necessary to
7 administer this subchapter.

8 Sec. 406.105. PERFORMANCE OF NOTARIAL ACTS. An electronic
9 notary public:

10 (1) is a notary public for purposes of Subchapter A and
11 is subject to that subchapter to the same extent as a notary public
12 appointed and commissioned under that subchapter; and

13 (2) may perform notarial acts as provided by
14 Subchapter A in addition to performing electronic notarizations.

15 Sec. 406.106. ELECTRONIC RECORD OF ELECTRONIC
16 NOTARIZATIONS. (a) An electronic notary public shall keep a secure
17 electronic record of electronic documents notarized by the
18 electronic notary public. The electronic record must contain for
19 each electronic notarization:

20 (1) the date and time of the notarization;

21 (2) the type of notarization;

22 (3) the type, the title, or a description of the
23 electronic document or proceeding;

24 (4) the printed name and address of each principal
25 involved in the transaction or proceeding;

26 (5) evidence of identity of each principal involved in
27 the transaction or proceeding in the form of:

1 (A) a statement that the person is personally
2 known to the electronic notary public;

3 (B) a notation of the type of identification
4 document provided to the electronic notary public; or

5 (C) the following:

6 (i) the printed name and address of each
7 credible witness swearing to or affirming the person's identity;

8 (ii) for each credible witness not
9 personally known to the electronic notary public, a description of
10 the type of identification documents provided to the electronic
11 notary public; and

12 (iii) a recording of any video and audio
13 conference that is the basis for satisfactory evidence of identity
14 and a notation of the type of identification presented as evidence;
15 and

16 (6) the fee, if any, charged for the notarization.

17 (b) The electronic notary public shall take reasonable
18 steps to:

19 (1) ensure the integrity, security, and authenticity
20 of electronic notarizations;

21 (2) maintain a backup for the electronic record
22 required by Subsection (a); and

23 (3) protect the backup record from unauthorized use.

24 (c) The electronic record required by Subsection (a) shall
25 be maintained for at least five years after the date of the
26 transaction or proceeding.

27 Sec. 406.107. USE OF ELECTRONIC RECORD, ELECTRONIC

1 SIGNATURE, AND SEAL. (a) An electronic notary public shall take
2 reasonable steps to ensure that any registered device used to
3 create an electronic signature is current and has not been revoked
4 or terminated by the device's issuing or registering authority.

5 (b) An electronic notary public shall keep the electronic
6 notary public's electronic record, electronic signature, and
7 electronic seal secure and under the electronic notary public's
8 exclusive control. The electronic notary public may not allow
9 another person to use the electronic notary public's electronic
10 record, electronic signature, or electronic seal.

11 (c) An electronic notary public may use the electronic
12 notary public's electronic signature only for performing
13 electronic notarization.

14 (d) An electronic notary public shall attach the electronic
15 notary public's electronic signature and seal to the electronic
16 notarial certificate of an electronic document in a manner that is
17 capable of independent verification and renders any subsequent
18 change or modification to the electronic document evident.

19 (e) An electronic notary public shall immediately notify an
20 appropriate law enforcement agency and the secretary of state of
21 the theft or vandalism of the electronic notary public's electronic
22 record, electronic signature, or electronic seal. An electronic
23 notary public shall immediately notify the secretary of state of
24 the loss or use by another person of the electronic notary public's
25 electronic record, electronic signature, or electronic seal.

26 Sec. 406.108. ONLINE NOTARIZATION REQUIREMENTS. (a) An
27 electronic notary public may perform an online notarization that

1 meets the requirements of this section and rules adopted under this
2 subchapter.

3 (b) In performing an online notarization, an electronic
4 notary public shall verify the identity of a person creating an
5 electronic signature at the time that the signature is taken by
6 using two-way video and audio conference technology that meets the
7 requirements of this subchapter and rules adopted under this
8 subchapter. Identity may be verified by:

9 (1) the electronic notary public's personal knowledge
10 of the person creating the electronic signature;

11 (2) using an in-person identity proofing process that
12 meets the specifications of the Federal Bridge Certification
13 Authority before the online notarization;

14 (3) using a valid digital certificate accessed by
15 biometric data; or

16 (4) using an interoperable personal identity
17 verification card that is designed, issued, and managed in
18 accordance with the specifications in:

19 (A) Personal Identity Verification of Federal
20 Employees and Contractors published by the National Institute of
21 Standards and Technology;

22 (B) Personal Identity Verification
23 Interoperability for Non-Federal Issuers published by the Federal
24 Chief Information Officers Council; and

25 (C) any supplements or revisions to the
26 publications described by Paragraphs (A) and (B).

27 (c) If an electronic notary public verifies an identity

1 under Subsection (b)(3) or (4), the electronic notary public's
2 electronic notarization system must ensure that the digital
3 certificate or personal identity verification card is current and
4 has not been revoked at the time the online notarization is
5 performed.

6 (d) The electronic notary public shall take reasonable
7 steps to ensure that the two-way video and audio communication used
8 in an online notarization is secure from unauthorized interception.

9 (e) The electronic notarial certificate for an online
10 notarization must include a notation that the notarization is an
11 online notarization.

12 Sec. 406.109. FEES FOR ELECTRONIC NOTARIZATION. An
13 electronic notary public may charge a fee in an amount not to exceed
14 \$25 for performing an electronic notarization.

15 Sec. 406.110. TERMINATION OF ELECTRONIC NOTARY PUBLIC'S
16 COMMISSION. (a) Except as provided by Subsection (b), an
17 electronic notary public whose commission terminates shall destroy
18 the coding, disk, certificate, card, software, or password that
19 enables electronic affixation of the electronic notary public's
20 official electronic signature or seal. The electronic notary public
21 shall certify compliance with this subsection to the secretary of
22 state.

23 (b) A former electronic notary public whose commission
24 terminated for a reason other than revocation or a denial of renewal
25 is not required to destroy the items described by Subsection (a) if
26 the former electronic notary public is recommissioned as an
27 electronic notary public with the same electronic signature and

1 seal within three months after the former electronic notary
2 public's former commission terminated.

3 Sec. 406.111. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE;
4 CRIMINAL OFFENSE. A person who, without authorization, knowingly
5 obtains, conceals, damages, or destroys the certificate, disk,
6 coding, card, program, software, or hardware enabling an electronic
7 notary public to affix an official electronic signature or seal
8 commits an offense. An offense under this section is a Class A
9 misdemeanor.

10 SECTION 2. This Act takes effect January 1, 2018.